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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,834	11/24/2003	John Rufino	UNISEN.044C1	3618
20995	7590	03/16/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			NGUYEN, TAM M	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			3764	

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/720,834

Applicant(s)

RUFINO, JOHN

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-33, 36-38 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28, 32, 36, 37 and 40-43 is/are rejected.
- 7) ☒ Claim(s) 29-31, 33 and 38 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 40 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 40, on line 11, the phrase "two foot pedals being sized and arranged to support said feet of a user" is indefinite because the claim describes the invention in terms of a particular user. Therefore, whether a device falls within the scope of the claims cannot be ascertained until a particular user engages the device. Consequently, the claim is indefinite. Ex parte Brummer 12 USPQ2d 1653 (BdPatApp & Inter 1989). Claims 41-44 are also rejected for being dependent on a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28, 32, 37, 40 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Chuang (5,833,583).

2. As to claims 28 and 32, Chuang discloses an exercise apparatus comprising a support frame (10), a ring gear (88) inherently having a working diameter fixed to the

support frame, a crank (14) inherently having a crank arm length supported for rotation about a crank axis (at axle 12), a planetary gear (15) inherently having an effective working diameter positioned within and engaged with the ring gear and rotationally connected to the crank about a planetary gear axis (at 18) and a foot pedal (21) rotationally connected to the planetary gear wherein the planetary gear axis is generally parallel to and offset from the crank axis, the foot pedal follows a substantially elliptical foot-path and a major axis of the foot-path is greater than twice said effective crank-arm length (see Figs. 1 & 8).

3. As to claim 37, Chuang discloses an exercise apparatus comprising a support frame (10), a crank (14), having a crank-arm length, supported for rotation about a crank axis (at axle 12), a foot pedal (21) in mechanical communication with the crank such that the foot pedal follows a substantially elliptical foot-path having a major axis that is greater than twice the effective crank-arm length and a planetary gear (15), having an effective working diameter, mechanically coupling said crank to said foot pedal wherein the planetary gear is sized and arranged to engage a ring gear (88), having an effective working diameter, so as to form an epicyclic gear train (see Figs. 1 & 8).

4. As to claims 40 and 43, Chuang discloses an exercise apparatus for providing simulated walking motion, the apparatus comprising two planetary gears (15) each having an effective working diameter and a planetary axis (at 18), two ring gears (88) each having an effective working diameter, at least one crank (14) having an effective crank arm length rotatable about a crank axis (at axle 12) and two foot pedals pivotally

secured to a corresponding one of the planetary gears that follow a substantially elliptical foot-path, inherently having a major axis, as said crank is rotated wherein each planetary gear is pivotally secured to said at least one crank about a pivot point (at 18) that is offset from said crank axis and each gear is sized and arranged such that as the crank is rotated, the planetary gears engage and rotate relative to the ring gears while simultaneously revolving about the crank axis to form an epicyclic gear train and the major axis of the foot-path is greater than twice the effective crank-arm length of the crank(see Figs. 1 & 8).

Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Stearns et al. (6,027,430).

5. As to claim 36, Stearns et al. disclose an exercise apparatus comprising a support frame (325), a crank (368) having an effective crank-arm length (radius of 368) rotatable relative to the support frame about a crank axis (A) and a foot pedal (390) in mechanical communication with the crank wherein the pedal is sized and arranged relative to the crank to follow a substantially elliptical foot-path relative to the frame and a major axis (B) of the foot-path is greater than twice the effective crank arm length and is about quadruple the effective crank-arm length (see Fig. 7 below).

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

7. Claims 29-31, 33 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

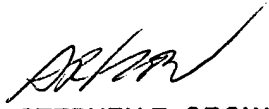
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 14, 2006



STEPHEN R. CROW
PRIMARY EXAMINER
ART UNIT 332